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EXAMINER
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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

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*Ex parte* ANIMESH MISHRA, JUN SHI, and KENNETH C. CURT

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Appeal 2009-013600  
Application 09/216,483  
Technology Center 2600

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Before ROBERT E. NAPPI, ERIC S. FRAHM, and KALYAN K.  
DESHPANDE, *Administrative Patent Judges*.

FRAHM, *Administrative Patent Judge*.

DECISION ON APPEAL

## STATEMENT OF CASE

### *Introduction*

Appellants appeal under 35 U.S.C. § 134(a) from a final rejection of claims 7-18, 20, 21, 23-25, and 27-29. Claims 1-6, 19, 22, and 26 have been canceled. We have jurisdiction under 35 U.S.C. § 6(b).

We affirm.

### *Exemplary Claim*

Exemplary independent claim 7 under appeal, with emphases added, reads as follows:

7. A remote control system for an electronic device comprising:

a first device including a processor and a radio frequency transceiver and an infrared transceiver, said processor arranged to control said infrared and radio frequency transceivers;

a remote control unit including a device to remotely control an electronic device and a telephone unit to enable remote communications with a telephone network, said remote control unit communicating with said first device; and

said telephone unit including *a detector to detect an unknown carrier frequency of a proximate wireless telephone*, said telephone unit being tunable to *automatically tune to the carrier frequency of the proximate wireless telephone*.

### *Examiner's Rejection*

The Examiner rejected claims 7-18, 20, 21, 23-25, and 27-29 as being unpatentable under 35 U.S.C. § 103(a) over the combination of Barzebar (US 2002/0044199 A1) and Flint (US 6,112,098). Ans. 4-9.

*Issues on Appeal*

Based on Appellants' arguments in the briefs, the following two issues are presented on appeal:

(1) Did the Examiner err in rejecting claims 7-18, 20, 21, 23-25, and 27-29 as being obvious because the combination of Barzebar and Flint fails to teach or suggest "detect[ing] an unknown carrier frequency of a proximate wireless telephone, said telephone unit being tunable to automatically tune to the carrier frequency of the proximate wireless telephone," as set forth in claim 7, and similarly set forth in claims 16 and 20?

(2) Did the Examiner err in rejecting claims 27 and 28 as being obvious because the combination of Barzebar and Flint fails to teach or suggest prompting a user to issue a page from the user's wireless telephone as set forth in claim 27, and storing instructions that enable a processor to do the same, as set forth in claim 28?

ANALYSIS

We have reviewed the Examiner's rejections in light of Appellants' contentions in the Appeal Brief (App. Br. 11-12) and Reply Brief (Reply Br. 1-2) that the Examiner has erred.<sup>1</sup> We disagree with Appellants' conclusions.

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<sup>1</sup> Appellants do not present separate patentability arguments for claims 8-15, 17, 18, 21, 23-25, and 29, and instead only present arguments in the Appeal Brief with regard to claims 7, 16, 20, 27 and 28 (App. Br. 11-12). Appellants make similar arguments as to claims 16 and 20 as Appellants make to claim 7 (App. Br. 11). We select claim 7 as representative of the group of claims 7-18, 20, 21, 23-25, and 29, pursuant to our authority under 37 C.F.R. § 41.37(c)(1)(vii). *See In re McDaniel*, 293 F.3d 1379, 1383 (Fed. Cir. 2002) ("If the brief fails to meet either requirement [of 37 C.F.R.

We adopt as our own (1) the findings and reasons set forth by the Examiner in the action from which this appeal is taken, and (2) the reasons set forth by the Examiner in the Examiner's Answer in response to Appellants' Appeal Brief (*see* Ans. 5-10). We concur with the conclusions reached by the Examiner, and highlight and address specific findings and arguments for emphasis as follows.

*Claims 7-18, 20, 21, 23-25, and 29*

Appellants make multiple arguments with regard to claim 7 (App. Br. 11; Reply Br. 1-2), concerning the failure of Barzebar and/or Flint to scan *unknown* frequencies. Appellants assert (App. Br. 11; Reply Br. 1-2) that Flint in particular fails to detect an unknown carrier frequency of a proximate wireless telephone, and instead Flint's telephone unit searches for and tunes to predetermined, known, and available channels. We have carefully reviewed these arguments, however, and they are not convincing of the non-obviousness of the claimed invention set forth in representative claim 7, and thus of the claimed invention set forth in claims 8-18, 20, 21, 23-25, and 29. We agree with the Examiner's broad but reasonable interpretation of claim 7 and the phrase "unknown carrier frequency," that "to a certain extent, a mobile telephony system would have to know what its available transmit/receive frequency band is, even if the mobile telephone has to scan for a specific carrier frequency" (Ans. 10). We also agree with the Examiner that "[a]ll mobile telephones are assigned to one frequency

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§ 1.192(c)(7)], the Board is free to select a single claim from each group of claims subject to a common ground of rejection as representative of all claims in that group and to decide the appeal of that rejection based solely on the selected representative claim.").

band or another and thus to an extent, know the frequencies available” (Ans. 10).

“During examination, ‘claims . . . are to be given their broadest reasonable interpretation consistent with the specification, and . . . claim language should be read in light of the specification as it would be interpreted by one of ordinary skill in the art.’” *In re Am. Acad. of Sci. Tech Ctr.*, 367 F.3d 1359, 1364 (Fed. Cir. 2004)(quoting *In re Bond*, 910 F.2d 831, 833 (Fed. Cir. 1990)); *see also In re Morris*, 127 F.3d 1048, 1053-54 (Fed. Cir. 1997).

Under the broadest reasonable interpretation of claim 7, in light of the specification, the detection of “an unknown carrier frequency of a proximate wireless telephone” (claim 7) encompasses Flint’s scanning of the ten possible channels to find the one carrier channel that has a high signal strength and was previously unknown before the scan (*see* TABLE 1; col. 4, ll. 8-10). *Am. Acad. of Sci. Tech Ctr.*, 367 F.3d at 1364. Since Flint tunes to the detected carrier frequency (*see* col. 6, ll. 42-65, initial link establishment and block 212 in Fig. 3), Flint teaches or suggests automatically tuning to the carrier frequency of the proximate wireless telephone.

Furthermore, even if Flint could be said not to disclose tuning *automatically*, we do not find doing automatically what is known to do mechanically to be nonobvious. *In re Venner*, 262 F.2d 91, 95 (CCPA 1958) (stating that providing an automatic way to replace a manual activity, which accomplishes the same result, is not sufficient to distinguish over the prior art). However, Flint at least suggests automatically tuning to the carrier frequency, since Flint discloses switching on the remote phone and entering a standby mode “automatically” when the remote phone is removed

from the cradle of the base unit (col. 3, ll. 32-39). Once standby mode is entered at step 14 (Fig. 1 of Flint), a “Radio Initialization” occurs at step 16, and then a link is established between the base and the remote (steps 36 and 38 in Fig. 1). The protocol of Figure 1 in Flint is performed by the circuitry 506 shown in Figure 6 as part of the base unit 508 (col. 3, l. 16 to col. 4, l. 3). Thus, when Flint describes that in “while in stand by mode the remote is contacted by the base in block 210” (col. 6, ll. 42-43), and then initial link establishment occurs in block 212, this is when radio initialization occurs. One of ordinary skill in the art would understand that radio initialization between the base unit (i.e., telephone unit) and the remote phone (i.e., proximate wireless telephone) performed by the circuitry 506 of the base unit 508 includes automatically tuning the base unit to the carrier frequency of the remote phone.

Additionally, we agree with the Examiner that “it is well known in portable telephone systems for the remote phone to ‘detect’ *an unknown* carrier frequency of a base unit” (Ans. 5-6). Notably, Appellants have not rebutted this statement or otherwise shown, on this record, that it is not well known for remote phones to detect an unknown carrier frequency of their base units (*see generally* Reply Br. 1-2).

In view of the foregoing, Appellants’ contentions (App. Br. 11; Reply Br. 2) that Flint fails to detect an *unknown* carrier frequency of a proximate wireless telephone are not persuasive. Accordingly, we will sustain the Examiner’s rejection of (i) independent claim 7, (ii) independent claims 16 and 20 which recite similar limitations, and (iii) dependent claims 8-15, 17-18, 21, 23-25, and 29.

*Claims 27 and 28*

With regard to the second issue on appeal, Appellants have failed to show that the Examiner erred in determining that the combination of Barzebar and Flint teaches or suggests the features recited in claims 27 and 28.<sup>2</sup> We agree with the Examiner (Ans. 8-9) that Barzebar (§§ [0032] and [0055]) discloses instructions that enable a processor based system to prompt a user to issue a page from the user's wireless telephone.

Barzebar describes that a "telephone may be preprogrammed to provide the digital audio channels at a particular time, such as a wake up call for bedroom mounted telephone" (§ [0032]), and a "[c]ontroller interprets the corresponding signal and executes appropriate instructions according to a predetermined instruction set stored in memory 406" (§ [0055]). Barzebar's wake up prompts a user of the telephone to take an action (e.g., waking up, making a call, or issuing a page) is equivalent to, and suggestive of, the recited prompting a user to issue a page. Also, Barzebar's predetermined instruction set is equivalent of the recited instructions. Accordingly, Appellants' argument (App. Br. 12) that the "cited reference"<sup>3</sup> fails to teach or suggest issuing a page is not persuasive.

In view of the foregoing, and for similar reasons as given above regarding Appellants' arguments as to claims 7, 16, and 20, the inventions recited in claims 27 and 28 have not been shown to be patentably

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<sup>2</sup> We note that claim 29 contains similar features as argued claim 27 and depends from representative claim 7. Appellants do not separately argue claim 29 (*see* App. Br. 11-12). Therefore, Appellants have waived such argument with respect to claim 29.

<sup>3</sup> Presumably, Appellants refer to Barzebar, which is the reference relied on by the Examiner as teaching the features of claims 27 and 28 (*see* Ans. 8-9).



distinguishable from the combined teachings and suggestions of Barzebar and Flint. Accordingly, we will sustain the obviousness rejection of claims 27 and 28.

### CONCLUSIONS

(1) The Examiner has not erred in determining that the combination of Barzebar and Flint teaches or suggests “detect[ing] an unknown carrier frequency of a proximate wireless telephone, said telephone unit being tunable to automatically tune to the carrier frequency of the proximate wireless telephone,” as set forth in claim 7, and similarly set forth in claims 16 and 20.

(2) The Examiner did not err in determining that the combination of Barzebar and Flint fails to teach or suggest prompting a user to issue a page from the user’s wireless telephone as set forth in claim 27, and storing instructions that enable a processor to do the same, as set forth in claim 28.

(3) The Examiner has not erred in rejecting claims 7-18, 20, 21, 23-25, and 27-29 as being unpatentable under 35 U.S.C. § 103(a).

(4) Claims 7-18, 20, 21, 23-25, and 27-29 are not patentable.

### DECISION

The Examiner’s rejection of claims 7-18, 20, 21, 23-25, and 27-29 under 35 U.S.C. § 103(a) is affirmed.

No time period for taking any subsequent action in connection with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

Appeal 2009-013600  
Application 09/216,483

AFFIRMED

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